

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
2006 Quadrennial Regulatory Review –)	MB Docket No. 06-121
Review of the Commission’s Broadcast)	
Ownership Rules and Other Rules Adopted)	
Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
2002 Biennial Regulatory Review – Review)	MB Docket No. 02-277
of the Commission’s Broadcast Ownership)	
Rules and Other Rules Adopted Pursuant to)	
Section 202 of the Telecommunications Act)	
of 1996)	
)	
Cross-Ownership of Broadcast Stations and)	MM Docket No. 01-235
Newspapers)	
)	
Rules and Policies Concerning Multiple)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations in)	
Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244
)	
Ways to Further Section 257 Mandate and To)	MB Docket No. 04-228
Build on Earlier Studies)	

REPLY COMMENTS OF JOINT TELEVISION BROADCASTERS

The undersigned organizations (collectively, the “Joint Television Broadcasters”) hereby submit these Reply Comments in response to the *Second Further Notice of Proposed Rule Making*¹ issued by the Commission in the above-referenced proceedings on August 1, 2007. Specifically, Joint Television Broadcasters highlight six of the 38 proposals in the Initial

¹ 2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, *Second Further Notice of Proposed Rule Making*, FCC 07-136 (rel. Aug. 1, 2007) (hereinafter “*Second Further Notice*”).

Comments filed by the Diversity and Competition Supporters (“DCS”) on October 1, 2007,² which Joint Television Broadcasters believe are among those which will expeditiously promote diversity directly and effectively.

I. BACKGROUND

The Commission released a *Further Notice of Proposed Rule Making* on July 24, 2006, seeking comment on various issues related to its media ownership rules.³ On August 23, 2006, DCS filed a motion requesting that the Commission withdraw the *Further Notice* and issue a revised notice.⁴ DCS asserted that the *Further Notice* failed to request comment on a number of important issues regarding minority and female media ownership.⁵ On August 1, 2007, the Commission issued the *Second Further Notice* as a supplement to the *Further Notice*. The *Second Further Notice* sought comment on the ownership diversity issues raised by DCS in the Motion for Withdrawal. The DCS Initial Comments were filed in response to the *Second Further Notice* on October 1, 2007. DCS presented 38 proposals as a “road map for the solution to America’s extraordinary minority and women broadcast ownership dilemma.”⁶

II. SIX PRIORITY PROPOSALS WARRANT IMMEDIATE ADOPTION AND HAVE WIDESPEAD INDUSTRY SUPPORT

The Joint Television Broadcasters believe that the immediate adoption of certain policies and procedures which promote participation in media ownership by minority and

² See Initial Comments of the Diversity and Competition Supporters in Response to the Second Further Notice of Proposed Rulemaking 1 (the “DCS Initial Comments”).

³ 2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, *Further Notice of Proposed Rule Making*, 21 FCC Rcd 8834 (2006) (hereinafter “*Further Notice*”).

⁴ See Motion for Withdrawal of the Further Notice of Proposed Rulemaking and for the Issuance of a Revised Further Notice (“Motion for Withdrawal”).

⁵ *Id.* See also *Second Further Notice*, *supra* note 1, at para. 1.

⁶ DCS Initial Comments, *supra* note 2, at 1.

female-owned businesses is warranted and in the public interest.⁷ Improved access to spectrum and capital, added flexibility in the rules applicable to transactional structures, and economic incentives for participation in media transactions/media ownership opportunities for women and minorities are the tools necessary to effectively advance diversity in ownership. Joint Television Broadcasters believe the following DCS proposals are among those which utilize these tools effectively and will have an especially immediate and meaningful impact on the underrepresentation of women and minorities in media ownership:

- Proposal 5 (Structural Rule Waivers for Creating Incubator Programs);
- Proposal 8 (Nonattribution of EDP Interests In SDBs);
- Proposal 24 (Advocacy of Tax Deferral Legislation Designed, To The Extent Possible, To Foster Minority Ownership);
- Proposal 29 (Encourage More Local And Regional Banks to Participate In SBA Guaranteed Loan Programs For Broadcast And Telecom Ventures);
- Proposal 30 (Establishment Of A Fund Of Funds); and
- Proposal 34 (Extension Of Divestiture Deadlines In Mergers Where Applicants Have Actively Solicited Bids For Spin-off Properties From SDBs).

⁷ Minority and female owned businesses shall be collectively referred to herein as a Socially and Economically Disadvantaged Business ("SDB"). This definition is consistent with the definition of an SDB adopted in the DCS Initial Comments. *See id.* at 1 n.3. The Joint Television Broadcasters understand that DCS intends to address the constitutionality of the SDB designation in supplemental comments. Therefore, the Joint Television Broadcasters will not address the constitutionality of the SDB designation at this time.

A. Structural Rule Waivers For Creating Incubator Programs

The Commission should adopt a flexible policy of granting waivers of the multiple ownership rules to advance participation in media ownership by SDBs.⁸ Specifically, a rule waiver that permits a licensee to have controlling interests in stations beyond the Commission's current numerical multiple ownership limits could be justified where the party requesting such waiver of the rules creates a program designed to ease entry barriers and provide assistance to qualified SDBs. This type of "incubator" program has been described in great detail in the DCS Initial Comments and in filings before the Commission dating as far back as 1992.⁹ In other words, the creation of an incubator program would form the basis for an FCC broadcast licensee (group owner) to acquire more than the otherwise-allowable number of stations in a market, if the company establishes a program that substantially promotes ownership by SDBs. An incubator program would provide disadvantaged businesses with the financing necessary to acquire media properties through loan guarantees and direct financial assistance, and provide the management and technical training necessary to successfully operate such properties. The ownership rule waiver proposed by DCS, as originally formulated by the National Association of Black Owned Broadcasters, will provide group owners with meaningful incentives to establish such incubator programs.

B. Nonattribution Of EDP Interests In SDBs

As noted in the DCS Initial Comments, the current equity/debt plus attribution rule ("EDP Rule") has the unintended effect of severely restricting the availability of seller

⁸ For additional examples of structural rule waivers designed to facilitate SDB media ownership, see Proposal 3 (Structural Rule Waiver For Selling A Station To An SDB, Where The Sale To The SDB Is Ancillary To A Transaction That Otherwise Would Be Barred By An Ownership Rule) and Proposal 7 (Structural Rule Waivers For Financing Construction Of An SDB's Unbuilt Station). *Id.* at 9, 15-17.

⁹ DCS Initial Comments, *supra* note 2, at 12.

financing in transactions that would further participation in media ownership by SDBs.¹⁰

Accordingly, the Commission should revise the EDP Rule to allow sellers to provide greater financing to SDBs in broadcast acquisitions. Many SDBs, especially new entrants, are blocked from media ownership by lack of access to sufficient capital. The Minority Media and Telecommunications Council's ("MMTC") EDP Task Force considered the many ways to improve the current rule and recommended that the EDP Rule be relaxed to permit up to 50% financing of an SDB, or 80% financing if the debt is non-convertible.¹¹ The DCS Initial Comments provide a sound basis and justification for amendment of the EDP Rule in this manner. In any event, the current EDP Rule unreasonably restricts access to capital by SDBs and should be liberalized to facilitate greater seller-financing opportunities in transactions involving SDBs. The modification to the EDP Rule proposed by the DCS will increase the ability of SDBs to finance purchases "without materially conflicting with the purpose of the EDP Rule."¹²

C. Advocacy Of Tax Deferral Legislation Designed, To The Extent Possible, To Foster Female and Minority Ownership

Congress should act promptly to provide tax incentives to station owners who sell their broadcast stations to SDBs. The current Congress is considering two separate tax-deferral bills focused on SDBs and small businesses, and the FCC should be vocal in its support of such legislation. As noted by DCS, the Commission's previous Tax Certificate Policy was responsible for a substantial increase in the amount of minority-owned broadcast stations.¹³ The

¹⁰ 47 C.F.R. § 73.3555 note 2(i).

¹¹ DCS Initial Comments, *supra* note 2, at 18.

¹² *Id.* at 28.

¹³ *Id.*

renewed ability to defer capital gains taxes will encourage station owners to sell their stations to SDBs. Current station owners who sell a station to an SDB will benefit from increased tax savings, while SDBs will benefit from increased ownership opportunities. It is easy to see why the Tax Certificate Policy has consistently enjoyed the widespread support of “major broadcast companies, public interest [groups] and civil rights organizations.”¹⁴

D. Encourage More Local And Regional Banks To Participate In SBA Guaranteed Loan Programs For Broadcast And Telecom Ventures

The FCC should partner with the U.S. Department of Treasury (“Treasury”) and the Small Business Administration (“SBA”) to modify existing programs to encourage increased financing for media transactions. Many local and regional lending institutions lack expertise to finance media transactions. With many experienced lenders only willing to finance large deals, SDBs lack the necessary financing sources to effectively compete for media properties. The current programs administered by Treasury (the Community Reinvestment Act) and the SBA (7(a) and 504 programs) to encourage investment in small or minority/female owned businesses do not sufficiently encourage the participation of SDBs in media transactions.¹⁵ The FCC is in a position to assist the Treasury and SBA in the design and implementation of these programs, which will result in the increased availability of financing for SDBs. An increase in available financing will lead to an increase in media ownership for SDBs.

E. Establishment Of A “Fund Of Funds”

The Commission should work with major pension funds to establish a “Fund of Funds.” Originally proposed by the FCC’s Diversity Committee in 2004, the Fund of Funds would direct capital to private equity funds “that invest in opportunities led by women and

¹⁴ *Id.* at 29.

¹⁵ *Id.* at 33-34.

minority entrepreneurs and/or in opportunities in underserved markets.”¹⁶ Private equity funds that principally invest in SDBs are an important source of financing for SDBs. However, the amount of assets managed by such funds is significantly less than the assets managed by private equity funds that do not specialize in lending to SDBs. This funding disparity is difficult to understand given, as the Diversity Committee noted, that “the financial returns from [private equity funds that principally invest in SDBs] were comparable or exceeded” the returns of private equity funds that do not specialize in lending to SDBs.¹⁷ The Fund of Funds will place capital where it will have the greatest positive impact on minority and female media ownership.

F. Extension Of Divestiture Deadlines In Mergers Where Applicants Have Actively Solicited Bids For Spin-off Properties From SDBs

The sale of “spin-off” properties in major media transactions to SDBs is recognized as an important method of increasing the representation of minorities and women in media ownership.¹⁸ The owner of a spin-off property is given a specific amount of time to divest of the property. The Commission has noted that SDBs traditionally require additional time to access capital, which makes it difficult to effectively compete for spin-off properties.¹⁹ When faced with a divestiture deadline, a station owner is less likely to solicit bids from businesses that do not have easy access to capital. As such, the Commission should provide the seller of a spin-off property with additional time to divest if the seller has actively solicited bids for the property from SDBs. A seller, relieved of the time pressure for divesting and able to retain cash flow for the spin-off property, will be more inclined to work with an SDB to arrange financing if the

¹⁶ DCS Initial Comments, *supra* note 2, at 34.

¹⁷ *Id.* at 35.

¹⁸ Letter from Hon. Kevin Martin, Chairman, Federal Communications Commission, to Hon. Henry Rivera, Chair, Advisory Committee on Diversity (Sept. 27, 2007).

¹⁹ DCS Initial Comments, *supra* note 2, at 40.

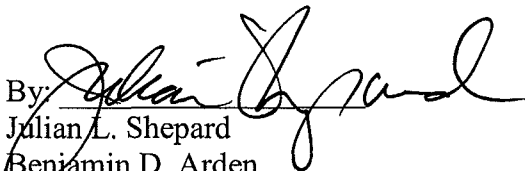
Commission adopts the divestiture deadline policy advocated by DCS. This proposal will be particularly meaningful if adopted in conjunction with many of the other proposals discussed herein that are designed to enhance access to capital available to SDBs for media transactions.

III. CONCLUSION

These six proposals provide the Commission with an important opportunity to enact policies that will increase the representation of minorities and women in media ownership. The public interest would be enhanced where increased participation of minorities and women is achieved and competition and diversity of viewpoints is enhanced. Society at large benefits from a diverse media industry. The proposals discussed herein, taken together, represent a comprehensive mixture of regulation and policy advocacy by the FCC designed to facilitate transactions involving SDBs, and to provide them with increased access to capital. Joint Television Broadcasters support the immediate adoption of these proposals.

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